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November 1, 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via hand delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

Re: CC Docket No. 00-176

Dear Ms. Salas:

On November 1, 2000, the undersigned, together with Dennis Schmidt, Wanda Balthrop, and Valerie Evans of Covad Communications Company, made an *ex parte* presentation to Ben Childers, Mark Stone, Praveen Goyal, Christopher Libertelli, Jennifer McKee, and Kathy Farroba of the Common Carrier Bureau in the above-referenced docket.

Covad presented its response to several "excuses" raised by Verizon as to why their xDSL performance in Massachusetts, which is out of parity in almost every single measure reported for May through August 2000, should not be viewed as an accurate portrayal of Verizon's wholesale performance. In the repair and maintenance arena, Verizon's own figures for July demonstrate that Covad customers wait an average of a full day longer for their service to be repaired than Verizon's own retail customers. Verizon suggests that Covad is playing a game with loop acceptance testing -- acceptance testing as "good" certain loops, and then opening a trouble ticket within 30 days of loop acceptance despite the fact that the loop was accepted as a good loop. Covad explained that, in the first instance, this "excuse" cannot explain away Verizon's horrible trouble ticket resolution performance, and the acceptance testing issue is a red herring, an effort to distract from the real issue. Nevertheless, Covad explained to Commission staff how a loop that is acceptance tested as "good" could end up being a nonfunctional loop requiring a trouble ticket.

- (1) The Verizon technician may not be testing from the demarcation point on the loop. Covad has no way of telling if Verizon is testing from the correct point. If the technician is testing from a point other than the NID, such as a cross box, large portions of the loop were not tested, and Covad would not know.

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- (2) Verizon could claim that it couldn't access the house/riser cable inside the customer's premises, when it actually could have accessed it but chose not to test it. A problem with that untested portion of the loop could arise.
- (3) A Verizon technician may get a different test readout on Verizon equipment than Covad's technician is receiving, and may chose to resolve the dispute in Verizon's favor by closing out the loop as good.
- (4) Verizon is constantly conducting field work in its loop plant, and may accidentally "undo" a good loop subsequent to the acceptance test but prior to Covad end user turnup.
- (5) Verizon technicians often use older Ohm meter equipment on loop tests, rather than multimeter equipment. The older equipment cannot detect loop problems as well as multimeters, so acceptance test results may be inaccurate.

Unfortunately, because of Verizon's refusal to provide Covad-specific data, we cannot verify the accuracy or rebut the hypothetical allegations raised by Verizon to excuse its poor performance.

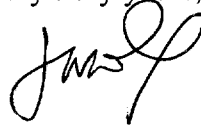
In addition, Covad rebutted Verizon's argument that Covad is simply opening trouble tickets because a loop does not work for the particular "flavor" of DSL that Covad seeks to offer, despite Covad's acceptance of the loop. Contrary to Verizon's argument, the only issue Covad would face in an acceptance testing environment is whether the loop is too long to offer various flavors of DSL. Other than loop length, acceptance testing procedures do not vary among different DSL flavors. If Verizon granted Covad the access to loop pre-qualification information, including the actual loop length, this would never be an issue. As it stands, because Verizon does not permit Covad to order loops over 18,000 feet in length, loop length issues simply do not occur. As a result, Verizon's assertion that Covad is playing some kind of DSL flavor game with the acceptance testing process is yet another red herring.

Covad also responded to Verizon's assertion that no competitive LEC has requested CLEC-specific information for Massachusetts. Attached is an email, sent by Covad to Verizon on July 21, 2000, requesting Massachusetts-specific data. Also in that email chain is Verizon's response, dated August 16, 2000, rejecting Covad's request. Verizon makes reference to a "consolidated arbitration," participants in which are granted CLEC-specific information for Massachusetts. Those metrics, available to consolidated arbitration participants, include no xDSL metrics, no linesharing metrics, and no performance reporting on any DSL whatsoever. Thus, even if such information was available to Covad, it would be of no utility and would not replace the Covad-specific information requested of Verizon.

Finally, Covad highlighted the Department of Justice's conclusion that Verizon has not satisfied its checklist obligations as to xDSL loops. In particular, Covad highlighted the Department's conclusion, as set out in the attached handout, that the Commission should not, and cannot, accept any of Verizon's "excuses." The Department strongly concluded that such excuses not only fail to explain Verizon's poor performance, but they ensure that Verizon will be able to escape any performance

assurance post-approval by simply relying on the same excuses to explain a continuing pattern of poor performance. The Commission's stamp of approval of Verizon's excuses would mark the most severe lowering of the bar to section 271 entry ever seen.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Oxman', with a stylized flourish at the end.

Jason Oxman

cc: Ben Childers
Mark Stone
Praveen Goyal
Christopher Libertelli
Jennifer McKee
Kathy Farroba
Susan Pié, Common Carrier Bureau

Oxman, Jason

From: Clancy, Mike
Sent: Wednesday, October 11, 2000 8:20 PM
To: Kimberly A. Scardino (E-mail); Oxman, Jason; Petrilla, Antony; maryjean@technologylaw.com
Subject: FW: FW: MA data

Attorney - Client Privileged - Joint Work Product
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AS REQUESTED

-----Original Message-----

From: julie.a.canny@verizon.com [mailto:julie.a.canny@verizon.com]
Sent: Wednesday, August 16, 2000 1:53 PM
To: Clancy, Mike
Cc: william.d.smith@verizon.com
Subject: Re: FW: MA data

While I defer to my attorney for a final answer - Mass is not like NY with regard to CLEC specific reports. The MA DTE has selected to use the NY C2c reports for purposes of the KPMG test. The only CLEC specific reports we are creating in MA is for CLECs covered by the consolidated arbitration. The DTE has not as yet required full c2c reporting for CLECs or established any additional requirements here. Part of this is covered in the performance plan proceeding.

We are not doing CLEC specific C2C reports for anyone in MA, nor do we have the programming complete to do so at this time. So the bottom line is unless you are covered by the consolidated arbitration, there are no reports for you.

"Clancy, Mike" <MClancy@covad.com> on 08/16/2000 01:27:48 PM

To: "Julie Canny (E-mail)" <julie.a.canny@verizon.com>
cc: (bcc: Julie A. Canny)
Subject: FW: MA data

Julie,

Did Bill ever get to you on this? How do I get MA specific data? While you're at it please let me know how to get the data for other states in the footprint.

thanks,

Mike

-----Original Message-----

From: william.d.smith@verizon.com [mailto:william.d.smith@verizon.com]
Sent: Friday, July 21, 2000 1:31 PM
To: Clancy, Mike
Cc: julie.a.canny@verizon.com
Subject: Re: MA data

Mike,

I'm forwarding your request to Julie, who should be back from
vacation
on
Monday.

Bill

"Clancy, Mike" <MClancy@covad.com> on 07/21/2000 11:40:53 AM

To: William.D.Smith@verizon.com
cc: (bcc: William Smith/EMPL/NY/Bell-Atl)
Subject: MA data

Bill,

I noticed in BA's 271 testimony for MA that BA generates the same
metrics in
MA as in NY. I once asked you how I would get those. I think, at that
time, they were not being generated. Are they available in CLEC
specific
form like what I receive for NY?

If so, please let me know who to contact so I get that data.

thanks,

Mike

**Presentation of Covad
Communications Company on
Section 271 Application of
Verizon - Massachusetts**

November 1, 2000

DOJ Recommends Rejection

- “The Department has concluded that Verizon has not yet demonstrated (1) that it provides nondiscriminatory access to DSL loops, and (2) that suitable performance measures with unambiguous benchmarks are in place to deter backsliding. The Commission should not approve this application without such a demonstration.” DOJ Evaluation at 2-3.
- “To the extent that the Massachusetts performance measures do not accurately indicate whether Verizon is providing discriminatory or nondiscriminatory access to DSL loops, those deficiencies in the performance measures will substantially increase the difficulties of detecting and providing remedies for any discriminatory performance that may arise in the future.” DOJ Evaluation at 14.

DOJ concludes that Verizon's own Data is not reliable

- KPMG did not test DSL metrics:
 - “Although KPMG reviewed other Verizon performance metrics, it did not test the DSL metrics because they were implemented by Verizon after the initial testing period.” DOJ Evaluation at 15.
- Verizon refuses to permit CLECs to independently check Verizon's unilateral performance reporting.
 - “Verizon has not provided individual CLECs reports that show its performance on their DSL orders. We are not aware of any reason for this omission, and in fact Verizon provides such individual performance reports in New York.” DOJ Evaluation at 15.

DOJ Rejects Verizon Excuses

- “However, it is difficult or impossible to verify Verizon’s reformulated performance calculations and analysis because Verizon has not provided the data underlying its reformulated performance calculations and because Verizon has not given the CLECs their individual performance reports, which would be necessary to permit CLECs to verify or refute Verizon’s restated performance.” DOJ Eval. At 11.
- “The Department has not been able to determine whether Verizon’s objections to the performance measures are valid or whether Verizon is providing nondiscriminatory performance even under its suggested alternative methods of measuring performance. We believe, however, that it is appropriate to insist that Verizon satisfy its burden of proof on these issues.” DOJ Evaluation at 13.